TRANSMITTAL SLIP	DATE 1/5/87
TO: DCI Registry	
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REMARKS:

This is a replacement for DCI/ICS-87-0751 dated 2 Jan 87. Attachments already in your possession

FROM: CCISCMS/ICS	
ROOM NO. 1225	BUILDING Ames

FORM NO. REPLACES FORM 36-8

STAT

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CMTE 19-5[illegible]

AMES ISC

SENIOR INTERAGENCY GROUP (INTELLIGENCE)
INTERAGENCY GROUP/COUNTERMEASURES (POLICY)
WASHINGTON, D.C. 20505

DCI/ICS-87-0751
5 January 1987

MEMORANDUM FOR: Chairman, National Operations Security Advisory Committee (NOAC)

FROM: [redacted] STAT
Executive Secretary

SUBJECT: Civil Satellite Remote-Sensing Programs

1. The Deputy Under Secretary of Defense (Policy) has forwarded the attached memorandum to the Secretariat of the IG/CM(P) requesting that NOAC undertake an interagency review of the licensing of civil remote-sensing systems and recommend to the Secretary of Defense (SecDef) standards for the guidance of the Secretary of Commerce in meeting the necessary national security concerns in the licensing process. Media access from commercial satellites has been a concern of US policymakers for several years. The Department of Defense (DoD) desires to develop and publish clear, defendable standards for the guidance of security oversight of US commercial satellites.

2. Correspondence from the CIA on a related aspect of this problem has come to the attention of CCISCMS. We encourage NOAC to seek CIA's participation in the development of solutions and recommendations.

3. Request you take the attachment for NOAC consideration. When NOAC is ready to reply to the SecDef, recommend the IG/CM(P) Chairman review the response.

[redacted] STAT

Attachment:
a/s

CCISCMS/ICS: [redacted] STAT

Distribution of DCI/ICS-87-0751 (w/att as shown)

Orig. - John F. Donnelly, ODUSD(P), Chairman, NOAC
1 - ICS Registry
1 - IG/CM(P) subject
1 - IG/CM(P) chrono (wo/att)

Next 3 Page(s) In Document Denied

Public Law 98-365
98th Congress

An Act

To establish a system to promote the use of land remote-sensing satellite data, and for other purposes.

July 17, 1984
[H.R. 5155]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Land Remote-Sensing Commercialization Act of 1984".

Land Remote-Sensing Commercialization Act of 1984.
Communications and telecommunications.
15 USC 4201 note.

TITLE I—DECLARATION OF FINDINGS, PURPOSES, AND POLICIES

FINDINGS

SEC. 101. The Congress finds and declares that—

Congress.
15 USC 4201.

(1) the continuous civilian collection and utilization of land remote-sensing data from space are of major benefit in managing the Earth's natural resources and in planning and conducting many other activities of economic importance;

(2) the Federal Government's experimental Landsat system has established the United States as the world leader in land remote-sensing technology;

Landsat system.

(3) the national interest of the United States lies in maintaining international leadership in civil remote sensing and in broadly promoting the beneficial use of remote-sensing data;

(4) land remote sensing by the Government or private parties of the United States affects international commitments and policies and national security concerns of the United States;

Defense and national security.

(5) the broadest and most beneficial use of land remote-sensing data will result from maintaining a policy of nondiscriminatory access to data;

(6) competitive, market-driven private sector involvement in land remote sensing is in the national interest of the United States;

(7) use of land remote-sensing data has been inhibited by slow market development and by the lack of assurance of data continuity;

(8) the private sector, and in particular the "value-added" industry, is best suited to develop land remote-sensing data markets;

(9) there is doubt that the private sector alone can currently develop a total land remote-sensing system because of the high risk and large capital expenditure involved;

(10) cooperation between the Federal Government and private industry can help assure both data continuity and United States leadership;

(11) the time is now appropriate to initiate such cooperation with phased transition to a fully commercial system;

(12) such cooperation should be structured to involve the minimum practicable amount of support and regulation by the

31-139 O - 84 (381)

Federal Government and the maximum practicable amount of competition by the private sector, while assuring continuous availability to the Federal Government of land remote-sensing data;

(13) certain Government oversight must be maintained to assure that private sector activities are in the national interest and that the international commitments and policies of the United States are honored; and

(14) there is no compelling reason to commercialize meteorological satellites at this time.

PURPOSES

15 USC 4202.

SEC. 102. The purposes of this Act are to—

(1) guide the Federal Government in achieving proper involvement of the private sector by providing a framework for phased commercialization of land remote sensing and by assuring continuous data availability to the Federal Government;

Defense and national security.

(2) maintain the United States worldwide leadership in civil remote sensing, preserve its national security, and fulfill its international obligations;

(3) minimize the duration and amount of further Federal investment necessary to assure data continuity while achieving commercialization of civil land remote sensing;

(4) provide for a comprehensive civilian program of research, development, and demonstration to enhance both the United States capabilities for remote sensing from space and the application and utilization of such capabilities; and

(5) prohibit commercialization of meteorological satellites at this time.

POLICIES

15 USC 4203.

SEC. 103. (a) It shall be the policy of the United States to preserve its right to acquire and disseminate unenhanced remote-sensing data.

(b) It shall be the policy of the United States that civilian unenhanced remote-sensing data be made available to all potential users on a nondiscriminatory basis and in a manner consistent with applicable antitrust laws.

Defense and national security.

(c) It shall be the policy of the United States both to commercialize those remote-sensing space systems that properly lend themselves to private sector operation and to avoid competition by the Government with such commercial operations, while continuing to preserve our national security, to honor our international obligations, and to retain in the Government those remote-sensing functions that are essentially of a public service nature.

DEFINITIONS

15 USC 4204.

SEC. 104. For purposes of this Act:

(1) The term "Landsat system" means Landsats 1, 2, 3, 4, and 5, and any related ground equipment, systems, and facilities, and any successor civil land remote-sensing space systems operated by the United States Government prior to the commencement of the six-year period described in title III.

(2) The term "Secretary" means the Secretary of Commerce.

(3)(A) The term "nondiscriminatory basis" means without preference, bias, or any other special arrangement (except on the basis of national security concerns pursuant to section 607) regarding delivery, format, financing, or technical considerations which would favor one buyer or class of buyers over another.

(B) The sale of data is made on a nondiscriminatory basis only if (i) any offer to sell or deliver data is published in advance in such manner as will ensure that the offer is equally available to all prospective buyers; (ii) the system operator has not established or changed any price, policy, procedure, or other term or condition in a manner which gives one buyer or class of buyer de facto favored access to data; (iii) the system operator does not make unenhanced data available to any purchaser on an exclusive basis; and (iv) in a case where a system operator offers volume discounts, such discounts are no greater than the demonstrable reductions in the cost of volume sales. The sale of data on a nondiscriminatory basis does not preclude the system operator from offering discounts other than volume discounts to the extent that such discounts are consistent with the provisions of this paragraph.

(C) The sale of data on a nondiscriminatory basis does not require (i) that a system operator disclose names of buyers or their purchases; (ii) that a system operator maintain all, or any particular subset of, data in a working inventory; or (iii) that a system operator expend equal effort in developing all segments of a market.

(4) The term "unenhanced data" means unprocessed or minimally processed signals or film products collected from civil remote-sensing space systems. Such minimal processing may include rectification of distortions, registration with respect to features of the Earth, and calibration of spectral response. Such minimal processing does not include conclusions, manipulations, or calculations derived from such signals or film products or combination of the signals or film products with other data or information.

(5) The term "system operator" means a contractor under title II or title III or a license holder under title IV.

TITLE II—OPERATION AND DATA MARKETING OF LANDSAT SYSTEM

OPERATION

SEC. 201. (a) The Secretary shall be responsible for— 15 USC 4211.

(1) the Landsat system, including the orbit, operation, and disposition of Landsats 1, 2, 3, 4, and 5; and

(2) provision of data to foreign ground stations under the terms of agreements between the United States Government and nations that operate such ground stations which are in force on the date of commencement of the contract awarded pursuant to this title.

(b) The provisions of this section shall not affect the Secretary's authority to contract for the operation of part or all of the Landsat system, so long as the United States Government retains—

(1) ownership of such system;

(2) ownership of the unenhanced data; and

(3) authority to make decisions concerning operation of the system.

CONTRACT FOR MARKETING OF UNENHANCED DATA

15 USC 4212.

SEC. 202. (a) In accordance with the requirements of this title, the Secretary, by means of a competitive process and to the extent provided in advance by appropriation Acts, shall contract with a United States private sector party (as defined by the Secretary) for the marketing of unenhanced data collected by the Landsat system. Any such contract—

(1) shall provide that the contractor set the prices of unenhanced data;

(2) may provide for financial arrangements between the Secretary and the contractor including fees for operating the system, payments by the contractor as an initial fee or as a percentage of sales receipts, or other such considerations;

(3) shall provide that the contractor will offer to sell and deliver unenhanced data to all potential buyers on a nondiscriminatory basis;

(4) shall provide that the contractor pay to the United States Government the full purchase price of any unenhanced data that the contractor elects to utilize for purposes other than sale;

(5) shall be entered into by the Secretary only if the Secretary has determined that such contract is likely to result in net cost savings for the United States Government; and

(6) may be reawarded competitively after the practical demise of the space segment of the Landsat system, as determined by the Secretary.

(b) Any contract authorized by subsection (a) may specify that the contractor use, and, at his own expense, maintain, repair, or modify, such elements of the Landsat system as the contractor finds necessary for commercial operations.

Congress.

(c) Any decision or proposed decision by the Secretary to enter into any such contract shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives for their review. No such decision or proposed decision shall be implemented unless (A) a period of thirty calendar days has passed after the receipt by each such committee of such transmittal, or (B) each such committee before the expiration of such period has agreed to transmit and has transmitted to the Secretary written notice to the effect that such committee has no objection to the decision or proposed decision. As part of the transmittal, the Secretary shall include information on the terms of the contract described in subsection (a).

(d) In defining "United States private sector party" for purposes of this Act, the Secretary may take into account the citizenship of key personnel, location of assets, foreign ownership, control, influence, and other such factors.

CONDITIONS OF COMPETITION FOR CONTRACT

15 USC 4213.

SEC. 203. (a) The Secretary shall, as part of the advertisement for the competition for the contract authorized by section 202, identify and publish the international obligations, national security concerns (with appropriate protection of sensitive information), domestic

legal considerations, and any other standards or conditions which a private contractor shall be required to meet.

(b) In selecting a contractor under this title, the Secretary shall consider—

(1) ability to market aggressively unenhanced data;

(2) the best overall financial return to the Government, including the potential cost savings to the Government that are likely to result from the contract;

(3) ability to meet the obligations, concerns, considerations, standards, and conditions identified under subsection (a);

(4) technical competence, including the ability to assure continuous and timely delivery of data from the Landsat system;

(5) ability to effect a smooth transition with the contractor selected under title III; and

(6) such other factors as the Secretary deems appropriate and relevant.

(c) If, as a result of the competitive process required by section 202(a), the Secretary receives no proposal which is acceptable under the provisions of this title, the Secretary shall so certify and fully report such finding to the Congress. As soon as practicable but not later than thirty days after so certifying and reporting, the Secretary shall reopen the competitive process. The period for the subsequent competitive process shall not exceed one hundred and twenty days. If, after such subsequent competitive process, the Secretary receives no proposal which is acceptable under the provisions of this title, the Secretary shall so certify and fully report such finding to the Congress. In the event that no acceptable proposal is received, the Secretary shall continue to market data from the Landsat system. Report.

(d) A contract awarded under section 202 may, in the discretion of the Secretary, be combined with the contract required by title III, pursuant to section 304(b).

SALE OF DATA

SEC. 204. (a) After the date of the commencement of the contract described in section 202(a), the contractor shall be entitled to revenues from sales of copies of data from the Landsat system, subject to the conditions specified in sections 601 and 602. 15 USC 4214.

(b) The contractor may continue to market data previously generated by the Landsat system after the demise of the space segment of that system.

FOREIGN GROUND STATIONS

SEC. 205. (a) The contract under this title shall provide that the contractor shall act as the agent of the Secretary by continuing to supply unenhanced data to foreign ground stations for the life, and according to the terms, of those agreements between the United States Government and such foreign ground stations that are in force on the date of the commencement of the contract. 15 USC 4215.

(b) Upon the expiration of such agreements, or in the case of foreign ground stations that have no agreement with the United States on the date of commencement of the contract, the contract shall provide—

(1) that unenhanced data from the Landsat system shall be made available to foreign ground stations only by the contractor; and

(2) that such data shall be made available on a nondiscriminatory basis.

TITLE III—PROVISION OF DATA CONTINUITY AFTER THE LANDSAT SYSTEM

PURPOSES AND DEFINITION

15 USC 4221.

SEC. 301. (a) It is the purpose of this title—

(1) to provide, in an orderly manner and with minimal risk, for a transition from Government operation to private, commercial operation of civil land remote-sensing systems; and

(2) to provide data continuity for six years after the practical demise of the space segment of the Landsat system.

(b) For purposes of this title, the term "data continuity" means the continued availability of unenhanced data—

(1) including data which are from the point of view of a data user—

(A) functionally equivalent to the multispectral data generated by the Landsat 1 and 2 satellites; and

(B) compatible with such data and with equipment used to receive and process such data; and

(2) at an annual volume at least equal to the Federal usage during fiscal year 1983.

(c) Data continuity may be provided using whatever technologies are available.

DATA CONTINUITY AND AVAILABILITY

Contracts with U.S.
15 USC 4222.

SEC. 302. The Secretary shall solicit proposals from United States private sector parties (as defined by the Secretary pursuant to section 202) for a contract for the development and operation of a remote-sensing space system capable of providing data continuity for a period of six years and for marketing unenhanced data in accordance with the provisions of sections 601 and 602. Such proposals, at a minimum, shall specify—

(1) the quantities and qualities of unenhanced data expected from the system;

(2) the projected date upon which operations could begin;

(3) the number of satellites to be constructed and their expected lifetimes;

(4) any need for Federal funding to develop the system;

(5) any percentage of sales receipts or other returns offered to the Federal Government;

(6) plans for expanding the market for land remote-sensing data; and

(7) the proposed procedures for meeting the national security concerns and international obligations of the United States in accordance with section 607.

AWARDING OF THE CONTRACT

15 USC 4223.

SEC. 303. (a)(1) In accordance with the requirements of this title, the Secretary shall evaluate the proposals described in section 302 and, by means of a competitive process and to the extent provided in

advance by appropriation Acts, shall contract with the United States private sector party for the capability of providing data continuity for a period of six years and for marketing unenhanced data.

(2) Before commencing space operations the contractor shall obtain a license under title IV.

(b) As part of the evaluation described in subsection (a), the Secretary shall analyze the expected outcome of each proposal in terms of—

(1) the net cost to the Federal Government of developing the recommended system;

(2) the technical competence and financial condition of the contractor;

(3) the availability of such data after the expected termination of the Landsat system;

(4) the quantities and qualities of data to be generated by the recommended system;

(5) the contractor's ability to supplement the requirement for data continuity by adding, at the contractor's expense, remote-sensing capabilities which maintain United States leadership in remote sensing;

(6) the potential to expand the market for data;

(7) expected returns to the Federal Government based on any percentage of data sales or other such financial consideration offered to the Federal Government in accordance with section 305;

(8) the commercial viability of the proposal;

(9) the proposed procedures for satisfying the national security concerns and international obligations of the United States;

(10) the contractor's ability to effect a smooth transition with any contractor selected under title II; and

(11) such other factors as the Secretary deems appropriate and relevant.

(c) Any decision or proposed decision by the Secretary to enter into any such contract shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives for their review. No such decision or proposed decision shall be implemented unless (1) a period of thirty calendar days has passed after the receipt by each such committee of such transmittal, or (2) each such committee before the expiration of such period has agreed to transmit and has transmitted to the Secretary written notice to the effect that such committee has no objection to the decision or proposed decision. As part of the transmittal, the Secretary shall include the information specified in subsection (a). Congress.

(d) If, as a result of the competitive process required by this section, the Secretary receives no proposal which is acceptable under the provisions of this title, the Secretary shall so certify and fully report such finding to the Congress. As soon as practicable but not later than thirty days after so certifying and reporting, the Secretary shall reopen the competitive process. The period for the subsequent competitive process shall not exceed one hundred and eighty days. If, after such subsequent competitive process, the Secretary receives no proposal which is acceptable under the provisions of this title, the Secretary shall so certify and fully report such finding to the Congress. Not earlier than ninety days after such certification and report, the Secretary may assure data continuity by procure- Report.

ment and operation by the Federal Government of the necessary systems, to the extent provided in advance by appropriation Acts.

TERMS OF CONTRACT

15 USC 4224.

SEC. 304. (a) Any contract entered into pursuant to this title—

(1) shall be entered into as soon as practicable, allowing for the competitive procurement process required by this title;

(2) shall, in accordance with criteria determined and published by the Secretary, reasonably assure data continuity for a period of six years, beginning as soon as practicable in order to minimize any interruption of data availability;

(3) shall provide that the contractor will offer to sell and deliver unenhanced data to all potential buyers on a nondiscriminatory basis;

(4) shall not provide a guarantee of data purchases from the contractor by the Federal Government;

(5) may provide that the contractor utilize, on a space-available basis, a civilian United States Government satellite or vehicle as a platform for a civil land remote-sensing space system, if—

(A) the contractor agrees to reimburse the Government immediately for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

(B) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for the civilian platform; and

(6) may provide financial support by the United States Government, for a portion of the capital costs required to provide data continuity for a period of six years, in the form of loans, loan guarantees, or payments pursuant to section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255).

(b)(1) Without regard to whether any contract entered into under this title is combined with a contract under title II, the Secretary shall promptly determine whether the contract entered into under this title reasonably effectuates the purposes and policies of title II. Such determination shall be submitted to the President and the Congress, together with a full statement of the basis for such determination.

(2) If the Secretary determines that such contract does not reasonably effectuate the requirements of title II, the Secretary shall promptly carry out the provisions of such title to the extent provided in advance in appropriations Acts.

MARKETING

15 USC 4225.

SEC. 305. (a) In order to promote aggressive marketing of land remote-sensing data, any contract entered into pursuant to this title may provide that the percentage of sales paid by the contractor to the Federal Government shall decrease according to stipulated increases in sales levels.

(b) After the six-year period described in section 304(a)(2), the contractor may continue to sell data. If licensed under title IV, the

contractor may continue to operate a civil remote-sensing space system.

REPORT

SEC. 306. Two years after the date of the commencement of the six-year period described in section 304(a)(2), the Secretary shall report to the President and to the Congress on the progress of the transition to fully private financing, ownership, and operation of remote-sensing space systems, together with any recommendations for actions, including actions necessary to ensure United States leadership in civilian land remote sensing from space. 15 USC 4226.

TERMINATION OF AUTHORITY

SEC. 307. The authority granted to the Secretary by this title shall terminate ten years after the date of enactment of this Act. 15 USC 4227.

TITLE IV—LICENSING OF PRIVATE REMOTE-SENSING SPACE SYSTEMS

GENERAL AUTHORITY

SEC. 401. (a)(1) In consultation with other appropriate Federal agencies, the Secretary is authorized to license private sector parties to operate private remote-sensing space systems for such period as the Secretary may specify and in accordance with the provisions of this title. 15 USC 4241.

(2) In the case of a private space system that is used for remote sensing and other purposes, the authority of the Secretary under this title shall be limited only to the remote-sensing operations of such space system.

(b) No license shall be granted by the Secretary unless the Secretary determines in writing that the applicant will comply with the requirements of this Act, any regulations issued pursuant to this Act, and any applicable international obligations and national security concerns of the United States.

(c) The Secretary shall review any application and make a determination thereon within one hundred and twenty days of the receipt of such application. If final action has not occurred within such time, the Secretary shall inform the applicant of any pending issues and of actions required to resolve them. Review date.

(d) The Secretary shall not deny such license in order to protect any existing licensee from competition.

CONDITIONS FOR OPERATION

SEC. 402. (a) No person who is subject to the jurisdiction or control of the United States may, directly or through any subsidiary or affiliate, operate any private remote-sensing space system without a license pursuant to section 401. 15 USC 4242.

(b) Any license issued pursuant to this title shall specify, at a minimum, that the licensee shall comply with all of the requirements of this Act and shall—

(1) operate the system in such manner as to preserve and promote the national security of the United States and to observe and implement the international obligations of the United States in accordance with section 607; Defense and national security.

(2) make unenhanced data available to all potential users on a nondiscriminatory basis;

(3) upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;

(4) promptly make available all unenhanced data which the Secretary may request pursuant to section 602;

(5) furnish the Secretary with complete orbit and data collection characteristics of the system, obtain advance approval of any intended deviation from such characteristics, and inform the Secretary immediately of any unintended deviation;

(6) notify the Secretary of any agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations or entities;

(7) permit the inspection by the Secretary of the licensee's equipment, facilities, and financial records;

(8) surrender the license and terminate operations upon notification by the Secretary pursuant to section 403(a)(1); and

(9)(A) notify the Secretary of any "value added" activities (as defined by the Secretary by regulation) that will be conducted by the licensee or by a subsidiary or affiliate; and

(B) if such activities are to be conducted, provide the Secretary with a plan for compliance with the provisions of this Act concerning nondiscriminatory access.

ADMINISTRATIVE AUTHORITY OF THE SECRETARY

15 USC 4243.

SEC. 403. (a) In order to carry out the responsibilities specified in this title, the Secretary may—

(1) grant, terminate, modify, condition, transfer, or suspend licenses under this title, and upon notification of the licensee may terminate licensed operations on an immediate basis, if the Secretary determines that the licensee has substantially failed to comply with any provision of this Act, with any regulation issued under this Act, with any terms, conditions, or restrictions of such license, or with any international obligations or national security concerns of the United States;

(2) inspect the equipment, facilities, or financial records of any licensee under this title;

(3) provide penalties for noncompliance with the requirements of licenses or regulations issued under this title, including civil penalties not to exceed $10,000 (each day of operation in violation of such licenses or regulations constituting a separate violation);

(4) compromise, modify, or remit any such civil penalty;

(5) issue subpenas for any materials, documents, or records, or for the attendance and testimony of witnesses for the purpose of conducting a hearing under this section;

(6) seize any object, record, or report where there is probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this Act or the requirements of a license or regulation issued thereunder; and

(7) make investigations and inquiries and administer to or take from any person an oath, affirmation, or affidavit concerning any matter relating to the enforcement of this Act.

(b) Any applicant or licensee who makes a timely request for review of an adverse action pursuant to subsection (a)(1), (a)(3), or

(a)(6) shall be entitled to adjudication by the Secretary on the record after an opportunity for an agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5, United States Code. 5 USC 701 *et seq.*

REGULATORY AUTHORITY OF THE SECRETARY

SEC. 404. The Secretary may issue regulations to carry out the provisions of this title. Such regulations shall be promulgated only after public notice and comment in accordance with the provisions of section 553 of title 5, United States Code. 15 USC 4244.

AGENCY ACTIVITIES

SEC. 405. (a) A private sector party may apply for a license to operate a private remote-sensing space system which utilizes, on a space-available basis, a civilian United States Government satellite or vehicle as a platform for such system. The Secretary, pursuant to the authorities of this title, may license such system if it meets all conditions of this title and— 15 USC 4245.

(1) the system operator agrees to reimburse the Government immediately for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

(2) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for such civilian platform.

(b) The Secretary may offer assistance to private sector parties in finding appropriate opportunities for such utilization.

(c) To the extent provided in advance by appropriation Acts, any Federal agency may enter into agreements for such utilization if such agreements are consistent with such agency's mission and statutory authority, and if such remote-sensing space system is licensed by the Secretary before commencing operation.

(d) The provisions of this section do not apply to activities carried out under title V.

(e) Nothing in this title shall affect the authority of the Federal Communications Commission pursuant to the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.). 47 USC 609.

TERMINATION

SEC. 406. If, five years after the expiration of the six-year period described in section 304(a)(2), no private sector party has been licensed and continued in operation under the provisions of this title, the authority of this title shall terminate. 15 USC 4246.

TITLE V—RESEARCH AND DEVELOPMENT

CONTINUED FEDERAL RESEARCH AND DEVELOPMENT

SEC. 501. (a)(1) The Administrator of the National Aeronautics and Space Administration is directed to continue and to enhance such Administration's programs of remote-sensing research and development. 15 USC 4261.

(2) The Administrator is authorized and encouraged to—

(A) conduct experimental space remote-sensing programs (including applications demonstration programs and basic research at universities);

(B) develop remote-sensing technologies and techniques, including those needed for monitoring the Earth and its environment; and

(C) conduct such research and development in cooperation with other Federal agencies and with public and private research entities (including private industry, universities, State and local governments, foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.

(b)(1) The Secretary is directed to conduct a continuing program of—

(A) research in applications of remote-sensing;

(B) monitoring of the Earth and its environment; and

(C) development of technology for such monitoring.

(2) Such program may include support of basic research at universities and demonstrations of applications.

(3) The Secretary is authorized and encouraged to conduct such research, monitoring, and development in cooperation with other Federal agencies and with public and private research entities (including private industry, universities, State and local governments, foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.

(c)(1) In order to enhance the United States ability to manage and utilize its renewable and nonrenewable resources, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to conduct programs of research and development in the applications of remote sensing using funds appropriated for such purposes.

(2) Such programs may include basic research at universities, demonstrations of applications, and cooperative activities involving other Government agencies, private sector parties, and foreign and international organizations.

(d) Other Federal agencies are authorized and encouraged to conduct research and development on the use of remote sensing in fulfillment of their authorized missions, using funds appropriated for such purposes.

Report.

(e) The Secretary and the Administrator of the National Aeronautics and Space Administration shall, within one year after the date of enactment of this Act and biennially thereafter, jointly develop and transmit to the Congress a report which includes (1) a unified national plan for remote-sensing research and development applied to the Earth and its atmosphere; (2) a compilation of progress in the relevant ongoing research and development activities of the Federal agencies; and (3) an assessment of the state of our knowledge of the Earth and its atmosphere, the needs for additional research (including research related to operational Federal remote-sensing space programs), and opportunities available for further progress.

USE OF EXPERIMENTAL DATA

15 USC 4262.

SEC. 502. Data gathered in Federal experimental remote-sensing space programs may be used in related research and development programs funded by the Federal Government (including applications

programs) and cooperative research programs, but not for commercial uses or in competition with private sector activities, except pursuant to section 503.

SALE OF EXPERIMENTAL DATA

SEC. 503. Data gathered in Federal experimental remote-sensing space programs may be sold en bloc through a competitive process (consistent with national security interests and international obligations of the United States and in accordance with section 607) to any United States entity which will market the data on a nondiscriminatory basis. 15 USC 4263.

TITLE VI—GENERAL PROVISIONS

NONDISCRIMINATORY DATA AVAILABILITY

SEC. 601. (a) Any unenhanced data generated by any system operator under the provisions of this Act shall be made available to all users on a nondiscriminatory basis in accordance with the requirements of this Act. Public availability. 15 USC 4271.

(b) Any system operator shall make publicly available the prices, policies, procedures, and other terms and conditions (but, in accordance with section 104(3)(C), not necessarily the names of buyers or their purchases) upon which the operator will sell such data.

ARCHIVING OF DATA

SEC. 602. (a) It is in the public interest for the United States Government— 15 USC 4272.

(1) to maintain an archive of land remote-sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) to control the content and scope of the archive; and

(3) to assure the quality, integrity, and continuity of the archive.

(b) The Secretary shall provide for long-term storage, maintenance, and upgrading of a basic, global, land remote-sensing data set (hereinafter referred to as the "basic data set") and shall follow reasonable archival practices to assure proper storage and preservation of the basic data set and timely access for parties requesting data. The basic data set which the Secretary assembles in the Government archive shall remain distinct from any inventory of data which a system operator may maintain for sales and for other purposes.

(c) In determining the initial content of, or in upgrading, the basic data set, the Secretary shall—

(1) use as a baseline the data archived on the date of enactment of this Act;

(2) take into account future technical and scientific developments and needs;

(3) consult with and seek the advice of users and producers of remote-sensing data and data products;

(4) consider the need for data which may be duplicative in terms of geographical coverage but which differ in terms of season, spectral bands, resolution, or other relevant factors;

(5) include, as the Secretary considers appropriate, unenhanced data generated either by the Landsat system, pursuant to title III, or by licensees under title IV;

(6) include, as the Secretary considers appropriate, data collected by foreign ground stations or by foreign remote-sensing space systems; and

(7) ensure that the content of the archive is developed in accordance with section 607.

(d) Subject to the availability of appropriations, the Secretary shall request data needed for the basic data set and pay to the providing system operator reasonable costs for reproduction and transmission. A system operator shall promptly make requested data available in a form suitable for processing for archiving.

Marketing.

(e) Any system operator shall have the exclusive right to sell all data that the operator provides to the United States remote-sensing data archive for a period to be determined by the Secretary but not to exceed ten years from the date the data are sensed. In the case of data generated from the Landsat system prior to the implementation of the contract described in section 202(a), any contractor selected pursuant to section 202 shall have the exclusive right to market such data on behalf of the United States Government for the duration of such contract. A system operator may relinquish the exclusive right and consent to distribution from the archive before the period of exclusive right has expired by terminating the offer to sell particular data.

Public availability.

(f) After the expiration of such exclusive right to sell, or after relinquishment of such right, the data provided to the United States remote-sensing data archive shall be in the public domain and shall be made available to requesting parties by the Secretary at prices reflecting reasonable costs of reproduction and transmittal.

(g) In carrying out the functions of this section, the Secretary shall, to the extent practicable and as provided in advance by appropriation Acts, use existing Government facilities.

NONREPRODUCTION

15 USC 4273.

SEC. 603. Unenhanced data distributed by any system operator under the provisions of this Act may be sold on the condition that such data will not be reproduced or disseminated by the purchaser.

REIMBURSEMENT FOR ASSISTANCE

15 USC 4274.

SEC. 604. The Administrator of the National Aeronautics and Space Administration, the Secretary of Defense and the heads of other Federal agencies may provide assistance to system operators under the provisions of this Act. Substantial assistance shall be reimbursed by the operator, except as otherwise provided by law.

ACQUISITION OF EQUIPMENT

15 USC 4275.

SEC. 605. The Secretary may, by means of a competitive process, allow a licensee under title IV or any other private party to buy, lease, or otherwise acquire the use of equipment from the Landsat system, when such equipment is no longer needed for the operation of such system or for the sale of data from such system. Officials of other Federal civilian agencies are authorized and encouraged to cooperate with the Secretary in carrying out the provisions of this section.

RADIO FREQUENCY ALLOCATION

SEC. 606. (a) Within thirty days after the date of enactment of this Act, the President (or the President's delegee, if any, with authority over the assignment of frequencies to radio stations or classes of radio stations operated by the United States) shall make available for nongovernmental use spectrum presently allocated to Government use, for use by United States Landsat and commercial remote-sensing space systems. The spectrum to be so made available shall conform to any applicable international radio or wire treaty or convention, or regulations annexed thereto. Within ninety days thereafter, the Federal Communications Commission shall utilize appropriate procedures to authorize the use of such spectrum for nongovernmental use. Nothing in this section shall preclude the ability of the Commission to allocate additional spectrum to commercial land remote-sensing space satellite system use. President of U.S. 15 USC 4276.

(b) To the extent required by the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.), an application shall be filed with the Federal Communications Commission for any radio facilities involved with the commercial remote-sensing space system. 47 USC 609.

(c) It is the intent of Congress that the Federal Communications Commission complete the radio licensing process under the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.), upon the application of any private sector party or consortium operator of any commercial land remote-sensing space system subject to this Act, within one hundred and twenty days of the receipt of an application for such licensing. If final action has not occurred within one hundred and twenty days of the receipt of such an application, the Federal Communications Commission shall inform the applicant of any pending issues and of actions required to resolve them.

(d) Authority shall not be required from the Federal Communications Commission for the development and construction of any United States land remote-sensing space system (or component thereof), other than radio transmitting facilities or components, while any licensing determination is being made.

(e) Frequency allocations made pursuant to this section by the Federal Communications Commission shall be consistent with international obligations and with the public interest.

CONSULTATION

SEC. 607. (a) The Secretary shall consult with the Secretary of Defense on all matters under this Act affecting national security. The Secretary of Defense shall be responsible for determining those conditions, consistent with this Act, necessary to meet national security concerns of the United States and for notifying the Secretary promptly of such conditions. Defense and national security. 15 USC 4277.

(b)(1) The Secretary shall consult with the Secretary of State on all matters under this Act affecting international obligations. The Secretary of State shall be responsible for determining those conditions, consistent with this Act, necessary to meet international obligations and policies of the United States and for notifying the Secretary promptly of such conditions.

(2) Appropriate Federal agencies are authorized and encouraged to provide remote-sensing data, technology, and training to developing nations as a component of programs of international aid.

(3) The Secretary of State shall promptly report to the Secretary any instances outside the United States of discriminatory distribution of data.

(c) If, as a result of technical modifications imposed on a system operator on the basis of national security concerns, the Secretary, in consultation with the Secretary of Defense or with other Federal agencies, determines that additional costs will be incurred by the system operator, or that past development costs (including the cost of capital) will not be recovered by the system operator, the Secretary may require the agency or agencies requesting such technical modifications to reimburse the system operator for such additional or development costs, but not for anticipated profits. Reimbursements may cover costs associated with required changes in system performance, but not costs ordinarily associated with doing business abroad.

AMENDMENT TO NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION, 1983

SEC. 608. Subsection (a) of section 201 of the National Aeronautics and Space Administration Authorization Act, 1983 (Public Law 97-324; 96 Stat. 1601) is amended to read as follows:

15 USC 1517 note.

"(a) The Secretary of Commerce is authorized to plan and provide for the management and operation of civil remote-sensing space systems, which may include the Landsat 4 and 5 satellites and associated ground system equipment transferred from the National Aeronautics and Space Administration; to provide for user fees; and to plan for the transfer of the operation of civil remote-sensing space systems to the private sector when in the national interest.".

AUTHORIZATION OF APPROPRIATIONS

15 USC 4278.

SEC. 609. (a) There are authorized to be appropriated to the Secretary $75,000,000 for fiscal year 1985 for the purpose of carrying out the provisions of this Act. Such sums shall remain available until expended, but shall not become available until the time periods specified in sections 202(c) and 303(c) have expired.

(b) The authorization provided for under subsection (a) shall be in addition to moneys authorized pursuant to title II of the National Aeronautics and Space Administration Authorization Act, 1983.

15 USC 1517 note.

TITLE VII—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

PROHIBITION

President of U.S. 5 USC 4291.

SEC. 701. Neither the President nor any other official of the Government shall make any effort to lease, sell, or transfer to the private sector, commercialize, or in any way dismantle any portion of the weather satellite systems operated by the Department of Commerce or any successor agency.

FUTURE CONSIDERATIONS

SEC. 702. Regardless of any change in circumstances subsequent to the enactment of this Act, even if such change makes it appear to be in the national interest to commercialize weather satellites, neither the President nor any official shall take any action prohibited by section 701 unless this title has first been repealed. 15 USC 4292.

Approved July 17, 1984.

LEGISLATIVE HISTORY—H.R. 5155:

HOUSE REPORT No. 98-647 (Comm. on Science and Technology).
SENATE REPORT No. 98-458 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 130 (1984):
Apr. 9, considered and passed House.
June 8, considered and passed Senate, amended.
June 28, House concurred in Senate amendment with an amendment.
June 29, Senate concurred in House amendment.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 29 (1984):
July 17, Presidential statement.

should be approved to enter into a UGSA or URSA with CCC.

CCC presently collects the full annual contract fee from warehousemen for the first contract year of the UGSA or URSA irrespective of when the contract is entered into during the contract year. It is proposed that the annual contract fee be prorated according to the number of full months for which the contract is to be effective.

CCC is also requesting comments regarding a proposed change in the annual contract renewal date from July 1 to April 1. The July 1 annual renewal date has caused problems for producers who harvest their grain in May and June and store their grain in commercial warehouses. These producers must select a commercial warehouse to store their harvested grain without knowing the storage and handling rates for the next contract year. An April 1 contract renewal date would eliminate this problem. If such a change is implemented, the 1986–87 contract year will be nine months rather than twelve months. Contract fees would be adjusted accordingly.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs, Agriculture, Oilseeds, Peanuts, Price support programs, Soybeans, Surety bonds, Tobacco, and Warehouses.

Proposed Rule

PART 1421—[AMENDED]

Accordingly, it is proposed that 7 CFR Part 1421 be amended as follows:

1. The authority citation for 7 CFR Part 1421, Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed continues to read as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714 b and c).

2. In § 1421.5552, paragraph (a)(3) is revised to read as follows:

§ 1421.5552 Basic Standards.

* * * * *

(a) * * *

(3) Have a net worth which is the greater of $50,000 or an amount which is computed by multiplying the maximum storage capacity of the warehouse (the total quantity of the commodity which the warehouseman desires to store and which the warehouse can accommodate when stored in the customary manner) under the approved contract with CCC times twenty-five (25) cents per bushel the case of grain, fifty (50) cents per hundredweight in the case of rough rice, eighty-five (85) cents per hundredweight in the case of milled rice, and sixty (60) cents per hundredweight in the case of dry edible beans. In the case of seed, the net worth of the warehouseman shall be at least equal to an amount which is computed by multiplying the estimated number of pounds of seed to be stored times seven (7) cents per pound. If this calculated net worth requirement exceeds $50,000, the warehouseman may satisfy any deficiency in net worth between the $50,000 minimum requirement and such calculated net worth requirement by furnishing bonds, irrevocable letters of credit, or other acceptable substitute security meeting the requirements of § 1421.5553.

* * * * *

3. Section 1421.5555, paragraph (b) is revised as follows:

§ 1421.5555 Exceptions.

* * * * *

(b) A warehouseman who has a net worth of at least $50,000 but who fails, or whose warehouse fails, to meet one or more of the other standards of this subpart may be approved if:

(1) CCC determines that the warehouse services are needed and the warehouse storage and handling conditions provide satisfactory protection for the commodity, and

(2) The warehouseman furnishes such additional bond coverage (or cash or acceptable negotiable securities or legal liability insurance policy) as may be prescribed by CCC.

4. The heading to § 1421.5558 is revised and § 1421.5558 is amended by revising paragraph (a)(2), adding a new paragraph (a)(3) and by revising paragraph (b) to read as follows:

§ 1421.5558 Contract and Application and Inspection Fees.

(a) * * *

(2) All grain and rice warehousemen who do not have an existing agreement with CCC for the storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral but who desire such an agreement must pay an application and inspection fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination. The annual contract fee must be paid by the warehouseman to CCC prior to the time that the agreement is entered into.

(3) The contract fee will be prorated based upon the total number of months for which the contract is to be effective.

(b) The amount of the contract and application and inspection fees shall be determined and announced annually by the Executive Vice President, CCC.

Signed at Washington, D.C., on March 19, 1986.

Milt J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-6388 Filed 3-21-86; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AGL-4]

Proposed Establishment of Transition Area—Paxton, IL

Correction

In FR Doc. 86-5204 beginning on page 8334 in the issue of Tuesday, March 11, 1986, make the following correction: On page 8335, in the third column, in the fifth line of the amendment to § 71.181, "radial" is misspelled.

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No. 51191-5191]

Licensing of Private Land Remote-Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: NOAA proposes to establish procedures to license operators of private land remote-sensing space systems in the United States under Title IV of the Land Remote-Sensing Commercialization Act of 1984, Pub. L. 98-365, 15 U.S.C. 2401 *et seq.* (the Act). NOAA believes the procedures in this Notice of Proposed Rulemaking (NPR) adequately protect the basic U.S. interests articulated by the Act, promoting national security, fulfilling international obligations, including the supervision required by Article VI of the Outer Space Treaty, and ensuring that access to unenhanced data is provided on a non-discriminatory basis. At the same time, the procedures in this NPR are intended to facilitate licensing and thereby aid in the development of a U.S. land-remote sensing industry.

Interested persons are invited to review the NPR and to submit comments on the proposed regulations.

DATES: Comments on the NPR must be received by May 23, 1988.

ADDRESSES: Comments should be sent to Peggy Harwood, NOAA, National Environmental Satellite, Data, and Information Service, FB-4, Room 2051, Washington, D.C. 20233. Phone (301) 763-4522.

FOR FURTHER INFORMATION CONTACT: Peggy Harwood at the address and telephone given above or John Milholland, NOAA, Office of General Counsel at (202) 254-7512.

SUPPLEMENTARY INFORMATION: Title IV of the Act requires that any person subject to the jurisdiction or control of the United States who intends to operate a private remote-sensing space system must obtain a license from the Secretary of Commerce. The authority to issue licenses has been delegated to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) and redelegated to the Assistant Administrator for the National Environmental Satellite, Data, and Information Service (NESDIS).

The Act sets forth detailed criteria for licensing decisions, and further refinement of the criteria by regulation is not generally necessary or useful where, however, the Act is less specific, e.g., as it relates to national security considerations, NESDIS believes that further refinement is not feasible at this time as discussed later under section III. C.

Consequently, the NPR sets forth primarily procedural requirements for obtaining a license. NESDIS intends to establish as simple a process as possible consistent with ensuring that its review of applications will protect the limited U.S. interests articulated by the Act.

I. The Application Process (Subpart B)

Licensing procedures involve the following stages:

A. Pre-application consultation (Section 960.4)

Consultation is discretionary on the part of the applicant but early communication is encouraged to promote cooperation and avoid delay. If prospective applicants request consultation, NESDIS must comply; the address for filing a written request is provided.

B. Filing Applications (Section 960.5 & 960.6)

No particular form of application is specified, but any application must be signed by the appropriate official (section 960.5(b)) and must contain the information specified in section 960.8. This section requires only information strictly necessary to make the determinations required by section 401(b) of the Act and § 960.11 of the regulations. These determinations relate primarily to national security interests and international obligations and to ensuring that unenhanced data is available on a non-discriminatory basis. Section 960.8 sets forth procedures for treating the information submitted as confidential to the extent permitted under the Freedom of Information Act.

C. Initial Agency Review (Section 960.9)

NESDIS and the relevant federal agencies will have up to 21 days to review an application for sufficiency of information and request additional detail if needed. The Act provides for a review period of 120 days from receipt for a complete application (section 960.9(d)).

D. Insurance of License (Sections 960.10 thru 960.12)

It is anticipated that the Assistant Administrator will make a determination "as soon as practicable" within the statutory time limit of 120 days from receipt of a complete application. (section 960.10(a)). The criteria for approval reflect the primary concerns of the Act, national security, international obligations, and non-discriminatory access to unenhanced data. The provisions contained in the license itself are dictated in large part by the requirements of section 402(b) of the Act.

II. Enforcement Procedures (Subpart C)

Section 403(a) of the Act gives the Administrator various powers to ensure compliance with the Act, these regulations and the license. These powers include the power to modify, suspend, or terminate the license, impose civil penalties up to $10,000 per violation, and seize objects, records or reports when there is probable cause to believe they were, are, or are likely to be used in a violation. Section 402(a) of the Act entitles the licensee to an adjudication on the record including an agency hearing with respect to any such adverse action.

NOAA has developed detailed procedures generally applicable to a wide range of NOAA enforcement programs. These procedures, set forth in 15 CFR Part 904, are incorporated in relevant part in these regulations. The procedures for the assessment of civil penalties (15 CFR 904 subpart B) and the procedures for holding agency hearings (15 CFR 904 subpart C) are incorporated in full. Section 403(a)(1) of the Act authorizes the Administrator, after notifying the licensee, to require immediate termination of activities under a license if he or she determines that the licensee "has substantially failed" to comply with the Act, these regulations, or the terms and conditions of the license. The NOAA-wide permit sanction procedures in 15 CFR 904 subpart D are followed in principle, but not detail, in section 960.14 of these regulations.

Section 403(a)(2) of the Act authorizes the Administrator to inspect the equipment, facilities, or financial records of a licensee; setion 402(b)(7) specifies that the licensee must agree to such inspection as a condition of the license. Under section 960.12(e) of these regulations inspection may take place either prior to launch to verify that the specifications of the licensed system conform to those in the application, or during operations under the license to ensure compliance with it. Such inspection can occur at "any reasonable time."

III. Specific Issues

Reviewers may wish to address the following issues raised by the NPR.

A. Scope of Regulations

Section 402 of the Act requires that persons "subject to the jurisdiction or control of the United States" must obtain a license under Title IV of the Act in order to operate a private remote-sensing space system. The Act does not apply to foreign entities operating solely from foreign territory. There may be instances, however, where foreign operators will carry out some activities in the U.S. or in conjunction with U.S. entities, such as using U.S. launch vehicles. Section 960.2 of the regulations provides guidance on the type of activities which could subject a non-U.S. operator to U.S. jurisdiction or control for licensing purposes under the Act. The basic principle behind this section is that foreign companies competing with U.S. firms in the remote-sensing market should do so on an equal basis. On the other hand, the U.S. generally avoids extra-territorial application of its laws. Furthermore, trying to impose restrictions on foreign operators to ensure equality with U.S. firms could discourage such operators from dealing with U.S. companies, particularly where the foreign operator intends to sell data primarily in foreign markets. U.S. policy is not promoted by insisting on unenforceable licensing conditions or on losing U.S. business without any

practical gain. This section attempts to balance these competing interests.

It may be noted that use of a U.S. launch vehicle or platform does not by itself require a license but is a factor to be considered with other U.S.-based activities.

B. Value-Added Activities

Section 402(b)(9) of the Act requires an operator who intends to engage in "value-added activities" to notify NESDIS and provide a plan to ensure non-discriminatory access to the "unenhanced data" generated by the system. This section directs NESDIS to define what constitutes a "value-added activity" by regulation.

Under section 104(4) of the Act "unenhanced data" includes both unprocessed and minimally processed signals and film products. Section 104(4) defines some processes that are "minimal" (rectification of distortions, registration with respect to features of the Earth, and calibration of spectral response) and some that are not (conclusions, manipulations, or calculations derived from signals or film products or the combination of the signals or film products with other data or information).

Clearly, any "minimal processing" does not constitute a "value-added activity" even though it may add to the usefulness of the product and even increase its market value. Conversely, what may be called "enhancement activities" generally are "value-added activities" although presumably there is some distinction or there would be no need for further definition.

The regulations distinguish between activities which alter or replace the "measured values" of "unenhanced data" and those which don't. "Measured values" are simply the numbers, shades, or colors assigned in some standardized system to represent the amount of radiation sensed in spectral band. Increasing the marketability alone, for example by enlarging or reducing a photo image, is not a "value-added activity".

Finally, the regulations confirm that private operators who intend to engage in remote-sensing activities to further their own commercial activities, such as oil exploration or timber management, must ensure non-discriminatory access to the useful unenhanced data that they generate. The definition specifies that an operator can engage in a "value-added activity" even though no resale is contemplated. Consequently, such operators must furnish the required plan to ensure equal access to the unenhanced data by other users (see also section 960.11(b)). This requirement is consistent with section 601(a) of the Act.

The Act defines in detail the elements of non-discriminatory access (Section 104(3)) and the regulations do not elaborate on these elements.

C. Further Definition of National Security and Foreign Policy Concerns

NESDIS recognizes that some prospective applicants may want greater certainty as to when NESDIS would deny or condition a license to protect national security or foreign policy interests. The relevant factors are reflected in the information requirements of section 960.6 but individual judgments are made in context affected by rapidly changing technology and must be made on a case-by-case basis.

D. Enforcement Procedures

In most cases the rights of licensees are fully defined by the procedures which have been developed by NOAA for its other regulatory programs. These procedures are contained in 15 CFR Part 904, the appropriate sections of which are incorporated in subpart C of these regulations.

A unique statutory authority not reflected in Part 904 is provided by section 403(a)(1) of the Act: the Administrator may immediately terminate activities under a license if he or she determines that the licensee has "substantially failed to comply with" the Act, these regulations, or the license. NESDIS does not further define what constitutes a "substantial" failure.

IV. Other Actions Associated With the Rulemaking

A. Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

The proposed regulations establish the procedures for licensing private operators of land remote-sensing space systems in accordance with the criteria established by the Act. The regulations will not result in any direct, or major indirect, economic or environmental effect. They are intended to promote the U.S. land remote-sensing industry by facilitating the licensing process and by ensuring that foreign companies competing with U.S. companies in the remote-sensing market do so on an equal basis to the maximum extent practicable.

B. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This proposed rule is essentially procedural and establishes a process intended to minimize any adverse impact on any entity—large or small—which may need a license to operate a remote-sensing space system. Because of the large size and cost of land remote-sensing projects, small businesses are unlikely to be able to amass the capital necessary to enter the field. The only involvement of small business concerns is likely to be as contractors or subcontractors who do not require a license. The General Counsel of the Department of Commerce has, therefore, certified that this regulation will not have a significant economic effect on a substantial number of small entities.

C. Paperwork Reduction Act of 1980 (Pub. L. 96-511)

The regulations contain certain information requirements which have not been reviewed by the Office of Management and Budget. These information requirements are being reviewed at this time and comments on them should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Department of Commerce, NOAA. The regulations impose the minimal information requirements to allow informed decisions in implementing NOAA's licensing responsibilities under Title IV of the Act. Very few applications are expected.

D. National Environmental Policy Act

Publication of the proposed regulations does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

V. Final Rules

NOAA will issue final rules after the comments received in response to the Notice have been evaluated.

List of Subjects in 15 CFR Part 960

Scientific equipment, Space transportation and exploration.

Dated: November 18, 1985.

William P. Bishop,

Acting Assistant Administrator.

Accordingly, a new Part 960 of Title 15 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 960—PRIVATE LAND REMOTE-SENSING SPACE SYSTEMS

Subpart A—General

Subpart B—Application Process

Subpart C—Enforcement Procedures

Authority: 15 U.S.C. 2401, et seq.

Subpart A—General

§ 960.1 Purpose.

These regulations establish the minimum practicable procedures and informational requirements to license and supervise the operation of a private remote-sensing space system under Title IV of the Land Remote-Sensing Commercialization Act of 1984 (The Act). They are intended to facilitate the development of private operational remote-sensing space systems in the United States while carrying out the purposes of the Act, which include in particular:

(a) To preserve and promote the national security of the United States;

(b) To ensure that data from private operational remote-sensing space systems will be sold on a non-discriminatory basis; and

(c) To fulfill the international obligations of the United States.

§ 960.2 Scope.

The Act and these regulations apply to any person subject to the jurisdiction or control of the United States who operates a private remote-sensing space system either directly or through an affiliate or subsidiary. For the purposes of these regulations, a person, affiliate, or subsidary is subject to the jurisdiction or control of the United States if such person is:

(a) A U.S. Citizen;

(b) A corporation, partnership, association or other entity organized or existing under the laws of the United States;

(c) Any other private space system operator having substantial connections with the United States or deriving substantial benefits from U.S. law that support its international operations. Relevant connections include using a U.S. launch vehicle and/or platform, operating a spacecraft command and/or data acquisition station in the U.S., and processing the data at and/or marketing it from facilities within the U.S. The following examples are intended to illustrate the application of this subsection.

Example 1. A non-U.S. corporation launches an operational remote-sensing space system using a U.S. operated launch vehicle and/or a platform launched from U.S. territory. The company operates no spacecraft command ground station in the U.S. although it has technicians and supervisors present in the U.S. to ensure integration of the foreign-built satellite or space system with the launch vehicle. The company acquires data directly from the space system and processes and distributes it from facilities outside the U.S., although it advertises the availability of data and/or information in U.S. publications.

The company is not subject to U.S. jurisdiction or control and requires no license for its remote-sensing activities.

Example 2. A company's operation is the same as in Example 1 except that it acquires, processes and distributes the data from one or more facilities within the U.S.

The company is subject to U.S. jurisdiction or control and requires a license.

Example 3. A company's operation is the same as in Example 2 except that it launches its remote-sensing space system on a non-U.S. launch vehicle from foreign territory.

The company is still subject to U.S. jurisdiction or control and requires a license.

Where ground activities in the U.S. are less extensive than those described above, such as mere operation of a command and data acquisition facility or a small retail distribution outlet, the Administrator will decide on an individual basis whether the operator is subject to U.S. jurisdiction or control for purposes of Title IV. In such cases, the use of a U.S. launch vehicle and/or platform may be significant although such use alone is not a sufficient connection.

Interested persons with questions may request a formal, binding opinion from the Administrator concerning the application of these regulations to their operation. Informal opinions by private operators of launch vehicles or other government agencies should not be relied upon.

§ 960.3 Definitions.

For the purposes of these regulations, the following terms have the following meanings:

Act means the Land Remote-Sensing Commercialization Act of 1984 (Pub. L. 98-365, 15 U.S.C. 4201 *et seq.*);

Administrator means the Administrator of NOAA, or his designee;

Affiliate means any person: (a) Which owns or controls more than 5% interest in the applicant or licensee, or (b) which is under common ownership or control with the applicant or licensee;

Application means any written request submitted under this part for: (a) Issuance of a license for the operation of a private remote-sensing space system; (b) transfer or renewal of any such license; or (c) an amendment to any such license as a result of a substantial change in any of the specified terms and conditions of the license;

Basic data set means data collected by any licensed private remote-sensing space system that: (a) Has been selected to be maintained by the United States Government in a public archive, and (b) shall remain distinct from any inventory of data that a system operator may maintain for sales and for other purposes. Section 602 of the Act ("Archiving of Data") sets forth the Government's interest and criteria for determining the "basic data set;"

Experimental data means data collected by the United States Government in experimental remote-sensing programs;

Measured values mean the assigned numbers, shades or colors, which represent, in some standardized system, an amount of electromagnetic radiation sensed in a spectral band.

NESDIS means the National Environmental Satellite, Data, and Information Service;

NOAA means the National Oceanic and Atmospheric Administration;

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity organized or existing under the laws of any nation.

Remote-sensing space system means any instrument or device or combination thereof and any related ground based facilities capable of sensing the Earth's surface from space by making use of the properties of the electromagnetic waves emitted, reflected, or diffracted by the sensed objects. For purposes of these regulations, small, hand-held cameras

shall not be considered remote-sensing space systems.

Subsidiary means an entity whose controlling interest is held by the applicant or licensee.

Unenhanced data means unprocessed or minimally processed signals or film products collected from a licensed remote-sensing space system. Such minimal processing may include rectification of distortions, registration with respect to features of the Earth, and calibration of spectral response. Such minimal processing does not include conclusions, manipulations, or calculations derived from such signals or film products or the combination of the signals or film products with other data or information.

Value-added activity means any activity that substantially changes the information content of the unenhanced data by altering or replacing the measured values of an unenhanced data product or by combining unenhanced signals or film products with other data or information. Converting assigned values from one unit of measurement to another does not constitute a value-added activity and increasing the marketability or the price of an unenhanced data product does not by itself constitute a value-added activity.

The product derived may be for sale, for any other form of distribution, or for the internal use of the system operator activity.

Subpart B—Application Process

§ 960.4 Pre-application consultation.

(a) Applicants are encouraged to consult with NOAA and other relevant federal agencies at the earliest possible planning stages. Such consultation may reveal design or data collection requirements that may be accommodated early at low cost or avoid costly changes in design or data collection characteristics. Consultation at the time a license application is being prepared may prove useful in defining informational requirements and in expediting review.

(b) *Consultation.* The Administrator shall consult upon request with any prospective applicant to assist the applicant in: (1) Properly preparing the application, and (2) contacting other Government agencies involved in the application review process in order to discuss the prospective application.

(c) *Request.* A prospective applicant who wishes to have a pre-application consultation should make such request in writing to the Assistant Administrator, National Environmental Satellite, Data, and Information Service, Washington, DC 20233.

§ 960.5 General.

(a) *Where to file.* Applications and all related documents shall be filed with the Assistant Administrator, National Environmental Satellite, Data, and Information Service (NESDIS), NOAA, Washington, DC 20233.

(b) *Form.* No particular form is required but each application must be in writing, must include all of the information specified in this subpart, and must be signed as follows:

(1) For a corporation: By a principal executive officer at least at the level of vice-president.

(2) For a partnership or a sole proprietorship: by a general partner or proprietor, respectively; or

(3) For an association or other entity: by a principal executive officer.

(c) *Number of copies.* Eight (8) copies of each application must be submitted.

§ 960.6 Information to be submitted with application.

The following information on the applicant, and its affiliates and subsidiaries shall be provided by the applicant:

(a) The name, mailing address, telephone number and citizenship of the applicant and any affiliates or subsidiaries, and of each director or owner of greater than five (5) percent interest.

(b) A copy of the charter or instrument by which the applicant was formed and authorized to do business. If the applicant is a corporation its charter shall be certified by the Secretary of State or other appropriate authority of the jurisdiction in which incorporated.

(c) The name, address, and telephone number of a person upon whom service of all documents may be made.

(d) Adequate operational information regarding the applicant's remote-sensing space system on which to base review to ensure compliance with national security and international requirements including.

(1) The date of intended commencement of operations and the expected duration of such operations;

(2) The method of launch, and the name and location of the operator of the launch vehicle and the lanuch site;

(3) The range of orbits and altitudes requested for authorized operation;

(4) The range of spatial resolution or instantaneous field of view requested; and

(5) The spectral bands requested for authorized operation.

(e) The applicant's intended data acquisition and distribution plans, including:

(1) Plans for data transmission to the ground;

(2) Method of data distribution including scheduling plans and procedures;

(3) Location of major data distribution outlets;

(4) Data reproduction policy;

(5) Pricing policy;

(6) The names and addresses of any parties that will engage in the marketing of data on a contractual basis with the applicant, or its affiliates and subsidiaries; and

(7) Any other information necessary to satisfy the requirements of section 601 of the Act.

(f) Any plans that the applicant, or any affiliate or subsidiary may have for engaging in value-added activities, including a plan and pricing policy for ensuring non discriminatory access to unenhanced data.

(g) All existing or anticipated agreements regarding system operation between the applicant, its affiliates and subsidiaries, and any foreign nation, entity or consortium.

(h) Proposed method of disposition of any remote-sensing satellites owned or operated by the applicant.

In the case of an application for an amendment to an existing license, only modifications or additions to previously submitted information need be provided.

§ 960.7 Amendment, withdrawal, and termination of an application.

(a) If information in an application becomes materially inaccurate or incomplete after it is filed but before the license application proceeding is completed, the applicant must promptly file an amendment that contains the corrected or additional information. The applicant should follow the procedures specified in section 960.5 for an original filing.

(b) If the Administrator determines that any amendment constitutes a major and substantial change to the applicant's original proposal, the Administrator may:

(1) Suspend the time deadlines prescribed in the Act and these regulations for processing the application, pending review of the amendment; or

(2) Require the applicant to submit a new license application.

(c) An applicant may withdraw an application at any time before the license application review is completed by delivering or mailing a written notice of withdrawal to the Administrator.

(d) The Administrator shall terminate review of a license application if:

(1) The application is withdrawn before the decision approving or denying it is issued; or

(2) The applicant, after written notice by the Administrator pursuant to § 960.9(c), does not provide adequate additional information to complete the application within the time stated in the written notice and the Administrator elects to disapprove the application under § 960.10(b).

§ 960.8 Confidentiality of information.

(a) Any person who submits information pursuant to this part, considered to be a trade secret, or commercial or financial information that is privileged or confidential, may request in writing that the information be given confidential treatment. Such request should:

(1) Be submitted at the time of submission of the information; and

(2) State the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurence of a certain event, or permanently).

(b) Information for which confidential treatment is requested must be clearly marked with a legend such as "Proprietary Information" or "Confidential Treatment Requested." Where such marking proves impracticable, a cover sheet containing such legend must be securely attached.

(c) If a request for confidential treatment is received after the information itself is received, NESDIS will try to associate the request with copies of the information, but cannot guarantee that such efforts will be effective.

(d) Any request for confidential treatment may include a written justification, stating why the information is a trade secret, or commercial or financial information that is privileged or confidential, and describing:

(1) The commercial or financial nature of the information;

(2) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(3) The nature and extent of the competitive harm that would result from public disclosure of the information;

(4) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(5) The extent to which persons other than the person submitting the information possess, or have access to, the same information; and

(6) The nature of the measures that have been and are being taken to protect the information from disclosure.

(e) Request for disclosure.

(1) Requests for disclosure of information submitted, reported, or collected pursuant to this part shall be in accordance with 15 CFR 903.7.

(2) NOAA will not usually determine whether confidential treatment is warranted until it receives a request for disclosure of the informtion, unless it would encourage the submission of information not required to be submitted under this part.

(3) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator will notify immediately the person who submitted the information and:

(i) Inform such person of the date by which NOAA must determine whether confidential treatment is warranted in order to comply with the request for disclosure (usually within 10 working days of receipt of the request); and

(ii) Inquire whether such person continues to request confidential treatment.

(4) If the person waives or withdraws a request for confidential treatment in full or in part, the person is strongly encouraged to deliver to NOAA a written statement to that effect. If the person confirms the request for confidential treatment, such person is strongly encouraged to deliver to NOAA a written statment is sufficient time for NOAA to fully consider it in making its formal determination (generally, not later than the close of business on the fourth working day after being notified under paragraph (e)(3) of this section . Such statment may:

(i) Address the issues listed in paragraph (d) of this section, describing the basis for believing that the information is deserving of confidential treatment, if such a statement was not previously submitted;

(ii) Update or supplement any statement previously submitted under paragraph (d) of this section; and

(iii) Present arguments against disclosure of the information.

(5) To the extent permitted by applicable law, part or all of any statement submitted under this section will be treated as confidential if so requested by the person submitting the response.

§ 960.9 Review procedures.

(a) The Administrator shall immediately forward a copy of any application or a summary thereof to the Department of Defense, the Department of State, and any other federal agencies determined to have a substantial interest in the proposed activity, such as the National Aeronautics and Space Administration, and the Department of Transportation. The Administrator shall advise such agencies of the deadline prescribed by paragraph (b) of this section to require additional information from the applicant.

(b) Within 21 days after the receipt of an application, the Administrator shall determine whether the application appears to contain all of the information required by Subpart B of these regulations. In making this determination the Administrator shall consider timely comments provided by the federal agencies consulted under paragraph (a) of this section.

(c) If the Administrator determines that all of the required information is not contained in the application, the Administrator may require by written notice to the applicant, that the applicant file further information, analysis, or explanation.

(d) If the Administration requires further information under paragraph (c) of this section, the time limitations prescribed by sectin 401(c) of the Act do not begin to run until the date on which the Administrator determines that the application appears to be complete and so notifies the applicant.

(e) Within sixty days of receipt of a complete application, each federal agency consulted under paragraph (a) of this section shall recommend approval or disapproval of the application. If an agency recommends disapproval, it shall state why it believes the application does not comply with any law or regulation within its area of responsibility and how it believes the application may be amended or the license conditioned to comply with the law or regulation in question.

§ 960.10 Timely approval or denial of application and issuance of license.

(a) The Administrator shall approve or deny a complete application as soon as practicable. If final action has not occurred within one hundred and twenty days agter receipt, the Administrator shall inform the applicant of any pending issues and of actions required to resoive them.

(b) If the Administrator denies the application, he or she shall provide the applicant with a concise statement in writing of the reasons therefor. Within 30 days after receipt of a notice of denial, the applicant may appeal by written notice to the Administrator and may request either an informal hearing or a formal hearing to be held in accordance with the procedures set forth at 15 CFR Part 904, Subpart C.

(c) As soon as practicable after the close of a hearing or, in the case of a formal hearing, the issuance of a recommended decision by the Administrative Law Judge, the

immediate termination of some or all licensed activities under paragraph (c) or unless the licensee requests a hearing under paragraph (b) of this section.

The NOLS also may propose to assess a civil penalty in accordance with § 960.15.

(b) Within 30 days after receipt of the NOLS, the licensee may request a hearing by serving a written request on the Administrator either in person or by certified or registered mail, return receipt requested, at the Address specified in the NOLS. Such hearing shall be held in accordance with the procedures set forth at 15 CFR Part 904, Subpart C.

(c) If the Administrator determines that the licensee has substantially failed to comply with any provision of the Act, these regulations, or with term, condition, or restriction of the license, the NOLS will include a finding to this effect and may require immediate termination of some or all licensed operations. Any request for a hearing under paragraph (b) of this section will not delay immediate termination under this paragraph.

§ 960.15 Civil penalties.

Section 403(a)(3) of the Act authorizes the Administrator to assess civil penalties of up to $10,000 for any violation of any requirement of the Act, these regulations or any term or condition of a license. Each day of operation in violation constitutes a separate violation. Such penalties will be assessed in accordance with the procedures set forth at 15 CFR Part 904, Subpart B.

§ 960.16 Seizure.

(a) If the Administrator determines that there is probable cause to believe that any object, record, or report was used, is being used or is likely to be used in violation of the Act, these regulations or the requirements of any license, the Administrator may seize any such item and issue the licensee a Notice of Seizure (NOS) containing:

(1) A description of the object, record, or report seized;

(2) A concise statement of the facts believed to show use or possible use in a violation; and

(3) A specific reference to the provisions of the Act, regulation, or license allegedly vilolated.

Within 30 days after receipt of a NOS, the licensee may request a hearing by serving a written and dated request on the Administrator either in person or by certified or registered mail, return receipt requested, at the address specified in the notice. Such hearing shall be held in accordance with the procedures set forth at 15 CFR Part 904, Subpart C. For good cause shown, the Administrator may in his or her sole discretion return the seized item pending the outcome of the hearing.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1 and 602]

LR-19-80

Unisex Annuity Tables

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income. Questions have arisen concerning the gender distinction in the existing tables and the outdated mortality experience upon which those tables are based. These regulations would affect taxpayers receiving amounts as annuities under annuity, endowment, or life insurance contracts for which they have paid premiums or other consideration and provide them with the guidance needed to determine the amount includible in gross income with respect to such contracts. This document also contains proposed regulations relating to the computations necessary to determine the amount excludable from an employee's gross income by allocation of contributions when the actual employer contributions are not known. This document also proposes to remove certain regulations relating to defined benefit plans that provided benefits for employees who were either self-employed or a shareholder-employee.

DATES: Written comments and requests for a public hearing must be delivered or mailed by May 8, 1986. The amendments to §§ 1.72-4, 1.72-5, 1.72-6, 1.72-7, 1.72-9, and 1.72-11 are proposed to be effective on July 1, 1986, and to apply to amounts received as an annuity after June 30, 1986. In addition, the proposed amendments to § 1.72-6 include transitional rules applicable to amounts received under contracts in which an amount is invested before July 1, 1986. The amendments to § 1.403 (b)-1 (d)(4)(iv) are proposed to be effective for taxable years beginning after July 1, 1986. The removal of §§ 1.401(a)-18 and 1.401(j) -1 through -6 is proposed to be effective for plan years beginning after December 31, 1988.

ADDRESS: Send comments and requests for a public hearing concerning the proposed amendments relating to the annuity tables to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-19-80], Washington, DC 20224.

Send comments and requests for a public hearing concerning IRC section 403(b) to Commissioner of Internal Revenue, Attention: CC:LR:T:EE-114-82, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

For further information concerning the proposed amendments relating to the annuity tables contact: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3238 (not a toll-free call).

For further information concerning IRC SECTIONS 401(a)(18), 401(j) or 403(b) CONTACT: Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T:EE-114-82). Telephone 202-566-3422 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) and the Table of OMB Control Numbers (26 CFR Part 602). The proposed amendments would update and gender-neutralize the annuity tables used to determine the exclusion ratio applicable to amounts received as annuities under annuity, endowment, or life insurance contracts. Section 72 permits a taxpayer to exclude from gross income that part of any amount received as an annuity which bears the same ratio to such amount as the investment in the contract as of the annuity starting date bears to the expected return under the contract as of such date. If the expected return depends in whole or in part on the life expectancy of one or more individuals, the statute requires that the expected return be computed with reference to actuarial tables prescribed by the Secretary of the Treasury. Soon after section 72 was enacted in 1954, the Secretary published regulations containing tables based on 1937 individual annuitant mortality and distinguished by gender. The effect of